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so it would hardly seem to be debatable that it is our business to save private property, nonoffending property, in time of war, and I hope our votes will be unanimous.

The PRESIDENT. Do any other gentlemen desire to participate in the discussion?

Admiral STOCKTON. I want to appear once more, not in the rôle as an individual member of this Society, but as representing the navy of the United States. I take it for granted that the speakers would know that it was hardly necessary to place naval officers in the rôle of pirates. In 1899, in the navy personnel act, which was passed without a protest from any officer in the naval service, prize money was abolished once and forever from the United States navy. Let us hope that we will have that credit at least from those who have put us in the extremely unpleasant rôle in which we unfortunately must return to the domestic circle as pirates.

Mr. BARROWS. I will say that I had the honor myself, as a member of Congress, of voting for that bill which abolished prize money in the United States, and we recognized that it came from the naval officers. They desired to have it done. It was done quietly; nobody knew it, but the naval officers of the United States said it must be done.

The PRESIDENT. Is there any other discussion? If not, we will pass to the second subject on the program: "Is the trade in contraband of war unneutral, and should it be prohibited by international and municipal law?"

Upon that the first paper will be read by Gen. George B. Davis, the Judge-Advocate-General of the army.

ADDRESS OF GEN. GEORGE B. DAVIS, U. S. A.

Mr. President and Gentlemen of the Society: The rules of contraband, in common with the other requirements of the law of nations upon the subject of maritime search and capture, represent a compromise between the conflicting interests of belligerents and neutrals. The neutral has no part in the war, and desires to maintain his

relations of amity with both belligerents. Having regard solely to his own interests and those of his subjects, it is his desire to continue his ante bellum trade, and it is also his desire to increase it in those articles for which the war has created a great and unusual demand — arms and munitions of war. The belligerents are in a somewhat different case. Each would like to trade in contraband with neutrals, and is willing to furnish a market for warlike material, but neither is willing that his enemy should enjoy the same advantage; and it is between these opposing and conflicting claims and interests that we must seek for the lines of delimitation between the rights and duties of belligerents and neutral states in time of war.

As the law now stands the neutral state may furnish no aid to either belligerent in his military or naval operations; but the neutral subject may continue to manufacture and sell contraband as in time of peace, and may consign his output to old markets, or he may find new markets for his wares in belligerent territory. If he does this, however, he does it at his peril, and can look to his own government for no sympathy or protection if his contraband ventures are captured on the high seas on their way to a belligerent destination.

On the high seas, in his own territorial waters or those of the enemy, a belligerent may search all neutral vessels and, if they contain contraband goods, he may capture them and send them in to a home port for adjudication. And here we have the complete terms of the compromise. The neutral subject continues, in time of war, the pursuits in which he was engaged in time of peace, taking an increased risk as to contraband ventures to hostile ports. The enemy, if sufficiently enterprising and vigilant in the exercise of his belligerent right of search, can prevent his adversary from being benefited by the illicit commerce of the neutral subject. In the terms of the compromise the rights of the parties have been fully and reasonably regarded, and neither can complain when the enforcement of the remedy, which is provided by the law of nations, rests in his independent discretion.

The statement of the rules governing contraband to which your attention has been invited is one in which English and American decisions and practice have been fully regarded, but have not been

given undue preponderance. This view results from the fact that in England and the United States the greatest freedom of business occupation is accorded to the citizen, and restrictions upon individual and corporate initiative in business undertakings are not readily tolerated. On the continent of Europe, however, where the functions of government are more highly concentrated and centralized, and where restrictions upon freedom of business and occupation are not unusual, and are never regarded as an unlawful exercise of governmental power, a neutral government finds it less difficult to control and regulate the commercial activities of its subjects, and is to that extent aided in the enforcement of its neutral obligations. For this reason, therefore, a continental state would encounter less difficulty in restricting the manufacture and export of contraband than would be encountered by England or the United States in the establishment and enforcement of a similar policy; and a presentation of the rules that should govern a neutral state in regulating the acts of its subjects would differ in some details from that which I have attempted to present as the one representing the generally accepted rules of international law in that regard.

We are now prepared to consider what the effect would be were the distinction of contraband of war to be abolished. That abolition would deprive the belligerent of the right, somewhat akin to that of self-defense, of preventing himself from suffering or from being injured by reason of the warlike material which the enemy has succeeded in obtaining from neutral sources. It is easy to say that both belligerents benefit equally from the contraband trade with neutrals, but a moment's examination will suffice to show that no two belligerents are, or have been or can ever be, in precisely the same situation in respect to neutral trade; for one will always be better situated than the other in that regard. Such being the case, the belligerent, having been deprived of the right to prevent his enemy from receiving contraband, shall sooner or later demand that the neutral states shall charge themselves with the burden of preventing export trade in contraband to a belligerent destination in time of war.

And there will be great reason in his demand. The furnishing of contraband constitutes unneutral services in an extremely annoying

form. So long as the belligerent can protect himself on the high seas, he has no occasion to complain, but where that remedy is denied him he will shortly look to the neutral state to interpose and prevent him from being injured by acts which take place or have their origin in neutral territory — a theater of activity from which the belligerent is rigorously excluded at all times and under all circumstances.

It should not be forgotten that the abolition of the distinction of contraband of war will not bring the relief to neutral trade which is hoped for. It has never been seriously proposed to deprive belligerents of the right of establishing blockades and, after all has been said, it is the right of blockade which contributes most powerfully to enable a state to prohibit contraband trade with the ports and coasts of the enemy. If the right of blockade continues to exist, the right of maritime search and capture will also continue to exist; so that the abolition of contraband will not operate to diminish to a substantial extent the exercise of belligerent rights which now constitutes the greatest annoyance and embarrassment to the sea-borne trade of neutrals in time of war. It is conceded that the abolition of contraband would tend, at least, to restrict the maritime area in which searches and captures are habitually made, but they would continue to exist, in a more restricted area perhaps, but with no diminution of the rigor with which they are now exercised.

One phase of the subject of contraband trade has never received the attention which it deserves. England is the only European state whose insular situation is such as to make it possible, in the event of war, for an opposing belligerent to establish a really effective blockade of its coasts. The principal continental states have extensive land frontiers, along which a blockade would be impossible under the existing rules of international law, unless those frontiers are controlled by the enemy or an ally. For that reason it is impossible for a European belligerent to prevent contraband trade on land from being carried on with his enemy in time of war. France has an extensive coast line, but its Spanish and Italian frontiers are open to contraband trade with the entire world. Italy is in a similar situation. The Austrian seaboard is extremely small, as is that of Germany, Russia, the Scandinavian states, Denmark, and the Nether-

lands. Their land frontiers, on the other hand, are quite extensive, and across them unrestricted trade in contraband can be carried on in time of war. Indeed, it is for this reason that the states I have named are so indifferent on the subject of contraband trade. In so far as their belligerent rights are concerned, the outbreak of war would change the routes, but would not diminish the volume of contraband trade with neutral states throughout the world. Their coasts might even be closed by a rigorously executed blockade, but all to no purpose so long as their land communications remained intact, and their commerce by rail and interior and river underwent no interruption.

The existing rules on the subject of contraband owe their efficacy to the decisions of prize courts, whose time of greatest activity was included in the last quarter of the eighteenth century and the first decade of the nineteenth century, a period of unexampled naval activity, during which neutral commerce was subjected to unreasonable restrictions by a power which was supreme at sea, and to equally unreasonable burdens by a power which was similarly invincible on land. The orders in council of the British Government and the Berlin and Milan decrees of the Emperor Napoleon have long since lost their obligatory force. Privateering has also disappeared. But the decisions of Sir William Scott still remain and serve in large measure to regulate the maritime rights and duties of belligerents and neutrals in time of war.

The beneficent operation of the Declaration of Paris has done much to mitigate the rigor of the rights of maritime search and capture; and the practice of belligerents in refraining from exercising their conceded rights in localities distant from the theater of belligerent activity has done still more to bring into being such immunity from capture and annoyance as is now enjoyed by neutral commerce in time of war. And it is in this direction — that is, in extending the area of neutral immunity, and in restricting the activity of belligerents to the theater of actual naval hostilities — that we must seek for the immunity of neutral commerce from belligerent interference in time of public war.

He who comes to Washington should be prepared with one of two

things, if he would do business with the Government. He must have figures or a brief. Without a brief, without figures, his words are wasted. I will give you some figures, with the conclusions that may be reasonably drawn from their presentation.

One of the principal maritime states of Europe in the year 1902 imported \$250,000,000 worth of goods that in time of war would be contraband. I will submit the case by saying that this sum of \$250,000,000 in value measures a number of things. In the first place, it measures the power or influence of the mercantile or commercial class which can be brought to bear upon the Government before the outbreak of war with a view to its prevention. In the next place, it measures the amount of assistance that a belligerent in time of war derives from contraband trade. Finally, it measures the disturbance to which the business and commercial undertakings of neutral states are necessarily subjected in time of war.

With this, thanking you for your considerate attention, I will conclude.

The PRESIDENT. The discussion on this subject will be opened by Prof. George G. Wilson, of Brown University, Providence, R. I.

REMARKS OF PROF. GEORGE G. WILSON,
OF BROWN UNIVERSITY, PROVIDENCE, R. I.

Mr. President, Ladies, and Gentlemen: It is a great pleasure to open the discussion upon the paper of General Davis. He has very excellently portrayed the present situation, and I wish simply to add certain considerations.

In the first place, the term "contraband," which is used in this question, "Is the trade in contraband of war unneutral, and should it be prohibited by international and municipal law?" is a very indefinite term. At the present time, at the outbreak of war each state usually makes a list of what it will regard as contraband. Therefore, the lack of uniformity in the definition of contraband is one of the first matters that is liable to give rise to confusion.

This uncertainty as to the nature of contraband exists among the

difference states, and also exists even in the same state at different times. There is a very dissimilar interpretation of the term "contraband" upon the Continent from the interpretation that is put upon the same term in England or in the United States.

Usually on the Continent contraband articles come within a very definite category, and in England and the United States the term includes a larger list of goods which are considered as conditional contraband. Even in England there is a very great difference in the interpretation. Professor Holland says one thing, and Professor Westlake says another in the Report of the Royal Commission on Supply of Food. In 1885 the Government of Great Britain says one thing. In 1888, in the manual of prize law, she says that it is a part of the prerogative of the Crown to extend or reduce the list of contraband. In 1904 Mr. Balfour says to Russia that the Government of Russia may not at its discretion extend the list of contraband.

With such confusion, not merely in the different states, but existing among the authorities in the same state, there is of course necessary, in the very first place, a definition of what we mean by "contraband" itself.

This being defined, the next question arises as to what is meant by unneutral trade. Now, we are acquiring a very definite idea as to what unneutral service is, and we are prescribing for unneutral service a very definite penalty. We are giving to contraband a very different penalty. Unneutral service in itself involves a participation directly in the hostilities. For instance, if a firm of the United States sends a collier with a belligerent fleet, that collier at once becomes a part of the regular belligerent service, and that being the case the collier is liable to all the consequences of the service. It means that the coal may be taken, that the collier may be taken, and that the officers and crew may be made prisoners of war. If, on the other hand, a private firm consigns in the way of regular trade to another firm in the belligerent country a cargo of coal, then the cargo of coal alone is liable. If we are to assimilate contraband to unneutral service we are to render our entire mercantile trade liable to severe penalties; the personnel of the merchant vessels would be

liable to capture as prisoners of war, and the goods and vessels to condemnation as participating in the war.

I think none of us would care to support any such position as this in discussing the question before us. Therefore we should, I think, exclude the idea of making contraband unneutral, even after we have a definition.

The next question is as to whether contraband trade should be prohibited by international and municipal law. If prohibited by international law it would thereby be prohibited by municipal law in most countries, because most states regard the international law as a part of the municipal law in time of war. The present treatment of contraband being the confiscation of the goods and of course the detention as witnesses of the crew, if that is necessary, there would the more need to be, in order to make this law enforceable, a very definite list of what is contraband. Even in the treaties of the United States there is a very great variety in the lists of what is contraband; so that in a war with one state we would, by our treaty, have a certain list of contraband, whereas in a war with another state we would have another list of contraband. In several of the existing treaties of the United States blunderbusses, pikes, bucklers, helmets, coats-of-mail, are specified as contraband.

It would be a very grave matter if in war with some of these states with which we have treaties we should not be permitted to include certain other articles which are now more necessary for war than would be saltpeter or some of those articles that are enumerated as contraband in the treaty stipulations.

The question also arises as to the distribution of insurance, which would apply both in the consideration of immunity of private property and in the consideration of contraband. Under the present system of insurance, as was very well brought out in the Royal Commission on Supply of Food and Raw Materials in the Time of War, of which Admiral Stockton made mention, in many instances the insurance is so distributed that the belligerent might capture a piece of insured property and the insurance may be actually held and paid by the same belligerent's own citizens. It is customary to reinsure in other countries, and stock is often distributed so that

a belligerent may sometimes be practically capturing his own property and damaging himself rather than another. One writer goes so far as to say that it might be very advantageous to reinsure certain goods in the enemy's country, and then capture those goods, in order to injure the enemy thereby.

The municipal officials, if we admit that the enforcement of the law against contraband is to be put in their hands, are confronted by an impossible task. How, for instance, can any municipal official determine exactly what is the destination of certain goods? Under the present doctrine of continuous voyages, for instance, which was very greatly extended by England when she found it to be practicable to extend it during the war in South Africa, how would it be possible for a neutral country to determine whether a cargo of goods consigned to a port near the South African Republic — to one of the Portuguese ports, let us say — was actually destined for that port instead of to the Boers?

Such determination would be practically impossible, and would place the burden of the war upon the neutral. Now, the whole tendency of modern times is to throw the burden of the war upon the belligerent and not upon the neutral. The prohibition of contraband trade by municipal law would throw upon the neutral an unnecessary burden of war, which is something that is entirely contrary to the present drift of international practice. If time permitted, I could go further, and could support what I have had to say, and what I would be very glad to say, more at length. But, in the first place, this proposition to prohibit contraband trade by municipal law is one that ought not to be supported because it would throw the burden of the war upon the neutral, when it should rest upon the belligerent.

In the second place, trade can be very much better controlled, as General Davis well showed, by enforcing more rigorously certain of the other rights of war as to blockade and the like. In the third place, such prohibition would be inadvisable, in so far as it would in general injure trade which is very advantageous for all civilization. Further, it might be shown by the history of the treaty between Great Britain and Denmark of 1670 to be a prohibition im-

possible of enforcement. In fine, the proposed prohibition of trade in contraband would be inexpedient, would be impracticable, and it would be impossible.

If it has all these disadvantages, and I think it can be shown to have these disadvantages, then what should be the reply to this question: "Is the trade in contraband of war unneutral, and should it be prohibited by international and municipal law?"

I would give a negative reply — that at present the trade in contraband of war should not be regarded as unneutral; that it should not be prohibited by international or municipal agreements.

In the way of a constructive reply, it should be said that what is necessary, and immediately necessary, is not the prohibition of trade in contraband, but rather the adoption by international agreement of a definition as to what contraband is, in order that the questions may be brought clearly before the courts, and in order that the neutral may know exactly what is innocent trade, and when he is taking a risk, and therefore when he should insure himself against risk.

REMARKS OF MR. WILLIAM J. COOMBS,
OF BROOKLYN, N. Y.

Mr. President, I have been very much interested in the discussion this morning, but I am — without criticising the lay-out of the business of the convention — I must confess a little disappointed.

This Society was organized at Mohonk, after a short speech which I made, and I have always supposed that that little five-minute talk had something to do with directing the attention of more active men to the organization of this Society. That talk was to this effect: The necessity of the codification of existing international law.

I pointed out that even in the laws which we now regard as international the interpretation is not equal on the part of all nations, particularly on the part of Latin nations; and as the debate here this morning has shown, there is a wide division in interpretation. I believed that experts, recognized authorities on international law, could meet and codify and come to a definite conclusion in relation to international agreements — part of which are to-day the result of

treaties; part of conferences; part of conventions — and that of course the findings of that commission would have to be ratified by the treaties of the various governments. I believe that the world has great respect for law — for recognized law; that when a thing is established as law the world will respect it; and I must say, without criticising anything of the action of the Executive Committee, that I really hope they will take some action — if not at this meeting, then at some other — to bring about and focus the effort to have the nations of the world send recognized authorities on international law to meet in convention and to codify those laws; submit them to the various nations for approval, and then we shall have unquestioned law to which the world will yield. After that will be ample time to add these new questions which will develop and be evolved by the evolutions of humanity.

The PRESIDENT. Do any other gentlemen wish to discuss the subject?

REMARKS OF PROF. THEODORE P. ION,
OF BOSTON, MASS.

Mr. President: I would like to touch, just for a moment, on a question that arose at the beginning of the war between Japan and Russia. You will remember that a good many torpedo boats and some submarine boats were sold. We all know that there are laws of neutrality in force in this country and in England. In the case of the torpedo boats it was said then that as they were sold by section the laws of neutrality were not violated; and in the case of the submarine boats it was said that as they were transported by boat — as they did not navigate by their own power — the neutrality laws were not violated.

According to my humble opinion I think if the Government of the United States and that of Great Britain at that time had gone to court to have it decided, very probably both the United States courts and the courts of Great Britain would have settled the matter in favor of the prohibition of torpedo boats sold by section and of submarine boats.

I hope that the matter can be regulated later on by a new act of Congress, or some statute of England.

There is another question that has been touched on by the Judge-Advocate-General. He said that the prohibition of goods sold by neutrals would not diminish the evil of the right of search and of visitation; and he said that with the blockade the right of search and visitation would exist.

We all know that when there is a blockade there is no more right of search and visitation.

The only question which he has considered, then, is whether a boat is trying to violate the blockade — that it is immaterial whether there is any contraband of war or not. I think that proposition is wrong; that if we can prohibit the sale of neutral goods, we will prevent the evils of the right of search and visitation.

As we all know, on the question of the blockade there are two views. The first is the English and American view, and the second is the continental view — at least, the view of France. According to the laws of France, or the French laws of jurisprudence, if a boat violates, actually, the blockade, after it has been given notice, *de facto*, on the start, then that boat may be seized and confiscated; whilst, according to the American and English rule — the principle of the continuous voyage, which is very dangerous — they might seize any boat provided they can prove that the boat started with the intention of violating the blockade.

I think the French view is more humanitarian, and if the European powers and the United States Government would adopt the French view, the evils of the right of search, as the Judge-Advocate-General has said, would be diminished. That is the only observation I have to make on these matters.

The PRESIDENT. Do any other gentlemen desire to make any observations upon this question? If not, the discussion will be closed.

Before the recess is taken, I have been asked to make some announcements. But in the first place I have an uncomfortable feeling that perhaps in answer to Mr. Ion's question about the dis-

cussion of the rights of foreigners, I said it would take place at 8 o'clock to-morrow evening.

Mr. Ion. I think you said it was to be this evening.

The PRESIDENT. It is to be this evening.

Mr. Ion. And I may be allowed to answer in writing. I think it is an important question. If I may be allowed to read a paper, I think I can do so in about ten or fifteen minutes.

The PRESIDENT. I think there will be no difficulty whatever in arranging that, Mr. Ion. I was afraid I said that the discussion was to take place to-morrow evening. It is to take place at 8 o'clock this evening — Friday evening.

I would be glad to have the members of the Society observe the following notice: To facilitate the work of the various committees in charge of the meeting, all the members of the association, whether residents of Washington or from out of town, are requested to register at the office of the Society in the library of the hotel on this floor. It is the room at one side of the F street entrance. You will find there a gentleman in charge of the register. Also, at the same time, you are requested to obtain there cards for the banquet which is to take place Saturday evening; and cards for the presentation to the President to-morrow. As I understand it, that presentation is to take place at 2 o'clock in the afternoon, and the cards will inform you where the association members are to meet for the purpose of going to the White House.

At the banquet to-morrow night I understand that Mr. Choate, the former ambassador to Great Britain; Gen. Horace Porter, former ambassador to France; Mr. James Bryce, the present British ambassador to the United States; and Mr. Olney, former Secretary of State, will speak. It is understood that there will be no reporters present, so that it will be possible to have an unrestrained peace congress.

The meeting will now take a recess until half-past 2 this afternoon, in this place.